

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1857 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

=====

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

HAIDERALI NOORMAHMAD MIYANA

Versus

COMMISSIONER OF POLICE, AHMEDABAD CITY

Appearance:

MS DR KACHHAVAH for Petitioner
MR DP JOSHI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 02/11/1999

ORAL JUDGEMENT

#. Heard the learned advocate Ms.D.R.Kachhavah for the petitioner and learned AGP Mr. D.P.Joshi for the respondents. Leave granted to amend the petition so as to enable the petitioner to add additional ground as per draft. The petitioner to carry out the amendment forthwith.

#. The detention order dated 17th January, 1999 passed

by respondent no.1 - Commissioner of Police, Ahmedabad city in exercise of power conferred under section 3 (1) of Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short) is challenged in the present petition under article 226 of Constitution of India.

#. The grounds of detention supplied to the petitioner under section 9(1) of PASA, copy of which is produced at Annexure : B inter alia indicate that a criminal case for the offences made punishable under the Bombay Prohibition Act was registered against the petitioner on 16.1.99 at Nashabandhi (South Division) Police Station. That country made liquor was seized from the possession of the petitioner. Furthermore, two witnesses on assurance of anonymity have given information in respect to the incidents dated 15.12.98 and 13.12.98 against the bootlegging activity of the petitioner. That on verification of the said information and on consideration of other material placed before him, respondent no. 1 as detaining authority has come to conclusion that the petitioner is a "bootlegger" within the meaning of sec. 2(b). That resort to general provisions of law being insufficient to prevent the petitioner from continuing his anti-social activity which adversely affects the maintenance of public order, it is necessary pass the detention order and hence the impugned order is passed.

#. The petitioner has challenged the impugned order on numerous grounds. It has been contended at bar on behalf of the petitioner that on the date of passing of the detention order, the petitioner was in judicial custody. Despite the said fact, without considering the less drastic remedy like cancellation of bail, the detaining authority has passed the impugned order whereby subjective satisfaction having been vitiated, the impugned order is rendered invalid.

#. In the matter of Zubedabibi vs. State of Gujarat, reported vide 1995(2) GLR, 1134, Division Bench of this Court has expressed a view that non consideration of less drastic remedy like cancellation of bail available under section 437(5) of Cr.P.C. discloses non application of mind on the part of the detaining authority vitiating the subjective satisfaction and rendering the detention order invalid. That the said view has been approved and endorsed in L.P.A. No. 1056/99 decided on 15.9.99 by this Court (Coram: C.K.Thakkar & A.L.Dave, JJ).

#. In the instant case, in the last but one para, the detaining authority has observed in the grounds of detention that though the petitioner is in police

custody, on completion of remand period, the petitioner is likely to move bail application and after getting himself released on bail, is likely to continue his anti-social bootlegging activity and as such to prevent the petitioner forthwith, the detention order is necessary. The said observations of the detaining authority in the grounds of detention disclose that the impugned order appears to have been passed on apprehension that the petitioner would be released on bail after completion of the remand period. The grounds of detention disclose that the detaining authority has failed to consider the aspect of cancellation of bail as less drastic remedy though available under section 437(5) of Cr.P.C. That the subjective satisfaction reached by the detaining authority having been vitiated, the order is rendered invalid.

#. As the petition succeeds on the above-stated ground alone, it is not necessary to consider the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 17th January, 1999 passed by respondent no.1 against the petitioner is hereby quashed and set aside. The petitioner-detenu Haiderali Noormahmad Miyana is hereby ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

pirzada/-